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Labor Board Races to Make Rulings

By MELANIE TROTTMAN

The National Labor Relations Board is hurrying to push through a raft of decisions by year's end, when a pair of vacant board seats could leave an important part of the agency hobbled indefinitely.



Associated Press

Boeing employees work on the 787 Dreamliner at the company's North Charleston, S.C., facility in 2009.

At the same time, congressional Republicans and business groups, unhappy with recent NLRB enforcement and rule-making initiatives, are signaling that they will try to block any new board nominees President Barack Obama might put forward.

"I'm going to create a high bar for any future nominees," Sen. Lindsey Graham (R., S.C.) said in an interview. "Given its recent activity," Mr. Graham said, "inoperable is progress."

When Chairman Wilma Liebman's term expires Aug. 27, the NLRB will have just three members on its board—two Democrats and one Republican. That is the minimum number needed to make major new rules. The board would shrink to two when Democrat Craig Becker's term expires Dec. 31, unless Mr. Obama fills one or both of the vacancies before then.

With Ms. Liebman on her way out, a flurry of activity is expected in the coming weeks. Among the issues pending at the NLRB are an overhaul of the rules governing union-organizing elections and the agency's challenge to a decision by **Boeing Co.** to locate a jetliner-assembly operation in a nonunion factory in South Carolina.

Business Before the NLRB

What constitutes an appropriate group of workers to organize at long-term-care facilities? The union wants to represent only nursing assistants. Business groups worry the board will apply the case to other industries and allow unions to organize subsets of employees in a workplace.

Can workers opposed to unionization maintain their right to immediately challenge the outcome of a card-check election—in which employees

Other cases test whether unions can organize multiple, small groups of workers in a single facility, and whether employees should continue to have a 45-day window in which to challenge workplace unionizations that use a "card check" vote instead of a secret ballot.

"They want to finish as many of the major cases as they can," said agency spokeswoman Nancy

sign cards to show their interest in joining—by demanding an NLRB-conducted secret ballot instead?

An NLRB judge's ruling on the agency's complaint against Boeing over its location of an assembly line at a non-union plant.

Review of cases involving businesses that move production to curb labor costs. Could lead to more collective bargaining before such moves could take place.

Cleeland. "That's what they do at the end of a term, and they try to be as productive as possible."

Mr. Graham is one of several Republican senators who have attacked the NLRB for challenging Boeing's decision. While it was the agency's general counsel's office, not the board, that filed the complaint against Boeing, the lawmakers see the two arms of the NLRB as one.

Both arms, run by Obama administration appointees, have angered business groups and Republicans in the past two years with a series of decisions they say grant unions organizing power at the expense of companies and job creation.

Sen. Tom Harkin, (D., Iowa.), chairman of the Senate Health, Education, Labor and Pensions committee, has said he would fight Republican efforts to stymie the NLRB in connection with the Boeing case.

"Republicans in this Congress have shown an alarming willingness to disrupt the basic functions of government to advance their partisan, antiworker agenda," Mr. Harkin said through an aide. "With nominees pending from both parties, I hope that we can reach a fair compromise and confirm a package of nominees."

The U.S. Chamber of Commerce said it was likely to pressure the Senate to resist board nominations. "We'd have to look at the candidates, but given the track record, it's probable that we'd try to get the Senate to filibuster a candidate," said Randy Johnson, the Chamber's senior vice president for labor.

The Members of the National Labor Relations Board

Wilma Liebman, Chairman – Democrat. Term expires Aug. 27

-President Barack Obama named Ms. Liebman chairman in January 2009. Ms. Liebman, a board member since 1997, declined to say whether she'd be willing to stay if Mr. Obama tried to nominate or appoint her again. Ms. Liebman previously served as an officer at a federal mediation agency and as a legal counsel to unions.

Craig Becker, member – Democrat. Term expires Dec. 31

-President Obama used a recess appointment to name this former union lawyer to the board in March 2010, after his nomination was blocked by a Republican-led filibuster. Mr. Obama nominated Mr. Becker again this January to a term that would expire in December 2014. Mr. Becker said he's willing to stay if he's confirmed.

The Supreme Court ruled last year that a board of just two members at the agency would lack the authority to issue case rulings. That could mean gridlock come January for 250 pending cases, ranging from whether graduate teaching assistants are students, rather than employees who are eligible to organize, to whether employees can legally criticize their workplaces on social-media sites.

A two-member board would also be unable to undertake rule-making, according to an NLRB spokeswoman. That would prevent the board from enacting sweeping new policies such as its recent proposal to streamline union-organizing elections. The proposal, which would speed up elections and is strongly opposed by business groups and Republicans, is expected to be a top priority of the board in coming weeks.

Mark Pearce – Democrat. Term expires Aug. 27, 2013

-President Obama used a recess appointment to name Mr. Pearce to the board in March 2010. Mr. Pearce was confirmed by the Senate three months later. He previously worked at a law firm he helped found, where he represented unions before state and federal courts and agencies.

Brian Hayes – Republican. Term expires Dec. 16, 2012

-Mr. Hayes was appointed early last year by President Obama and sworn in in June 2010 after gaining Senate confirmation. He spent more than two decades in private practice representing management in labor and employment law, and most recently served as a director for a Senate labor committee.

Vacant – a Republican slot.

-President Obama nominated Terence Flynn, a Republican, in January to succeed Republican member Peter Schaumber, whose term expired last year. The nomination is still pending before the Senate.

--Source: NLRB, WSJ reporting

With just two members, the NLRB could do little more than oversee such elections. The overall agency, which includes the general counsel's office, will still be able to investigate and prosecute cases and dismiss charges against parties, among other functions.

Mr. Obama could try to replace or reappoint the two departing Democrats, either by seeking Senate confirmation or by naming them in a recess appointment when Congress is out of session. Mr. Becker was named to his board seat in a recess appointment last year after failing to win Senate confirmation.

Last week, a group of House Republicans led by Rep. Jeff Landry (R., La.) said that it would hold "pro forma" sessions through August to prevent Mr. Obama from making recess appointments during the congressional recess. The effort appeared to be broader than a targeting of the NLRB.

The White House declined to say when or how it might attempt to fill the coming vacancies. Mr. Obama could even try to add new members to the board, which has five seats, though it has been operating with four members.

A Republican candidate Mr. Obama nominated to succeed Peter Schaumber after his term expired a year ago also hasn't been confirmed. The White House often seeks a confirmation vote on several candidates at one time, including those representing different political parties.

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